

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-52942

RODERICK S. BURBANK, and
AURETHA L. BURBANK,

Chapter 13

Judge Thomas J. Tucker

Debtors.

SECOND ORDER REQUIRING SUPPLEMENTATION OF FEE APPLICATION

This case is before the Court on a fee application filed by counsel for the Debtors on September 25, 2009 (Docket # 56). On October 22, 2009, the applicant filed a Certification of Non-Response, indicating that no party had timely objected to this fee application (Docket # 62). On October 23, 2009, the Court entered an order requiring the applicant to supplement the fee application. (Docket # 64). Later that day, applicant filed a supplement in response to the Court's Order. (Docket # 65).

The Court has reviewed the October 24, 2009 Supplement and finds it unsatisfactory.

The first sentence of E.D. Mich. L.B.R. 2016-1(a)(3) requires every fee application to contain a paragraph number 3, in which the applicant must "[p]rovide a narrative summary explaining the services performed and how the services benefitted the estate." In the next sentence, this local rule states that "in a chapter 13 case, a pre-confirmation or post-confirmation fee application that requests approval of fees and expenses totaling more than \$3,500.00 in that application shall specifically identify the circumstances of the case that make the amount requested reasonable."

As the Court held in its October 23, 2009 Order, the fee application does not comply with this requirement. Nor does the October 23, 2009 Supplement comply with this requirement.

Rather, the Supplement merely repeats, apparently verbatim, the statements applicant made in paragraph 3 of the fee application. Those statements were made in the fee application under the heading “Nature of services rendered:.” Both in the fee application and in the Supplement, these statements are merely a summary of the services applicant provided in this case. As such, they may satisfy, at least in part, the requirement of the first sentence of L.B.R. 2016-1(a)(3), which requires the applicant in every fee application to “[p]rovide a narrative summary explaining the services performed and how the services benefitted the estate.” But this does not satisfy the separate and additional requirement, contained in the second sentence of the local rule, that applicant “specifically identify the circumstances of the case that make the [fee and expense amount totaling more than \$3,500.00] reasonable.”

To satisfy that requirement, the fee application should state, in a paragraph numbered 3, the following, or something like the following: “The following circumstances of the case make the fees and expenses requested, which total more than \$3,500.00, reasonable:.” The fee application did not do this.

Next, the application should explain what it was about this particular case that reasonably caused the fees and expenses to exceed \$3,500.00, and to exceed that amount by as much as they did. Such explanation must be something other than just a narrative summary of the work that counsel did. It should be a concise and explicit explanation of what it was about this case that required more work by counsel than a more typical Chapter 13 case, in which the pre-confirmation fees and expenses do not exceed \$3,500.00.

One reason why applicant’s paragraph 3 did not satisfy this requirement is that it included many items of work or case events that occur in *every* Chapter 13 case. The following quotes in

full applicant's narrative summary. The Court has bolded the parts of this narrative summary that lists work or an event that routinely occurs in every, or virtually every, Chapter 13 case, including the many cases where pre-confirmation fees are less than \$3,500.00:

Applicant met with client to discuss filing for bankruptcy. Applicant met with clients to review paystubs and expenses. Applicant recommended that clients file a Chapter 13 bankruptcy. Thereafter, applicant met with clients and completed their Chapter 13 bankruptcy schedules, drafted the Chapter 13 plan, and finalized same.

After the case was filed, Applicant contacted Trott & Trott regarding the filing and to confirm cancellation of a pending foreclosure sale. **Applicant received the Notice of bankruptcy filing, calendared the dates for the first meeting and confirmation hearing, and sent correspondence to the clients regarding same.**

Applicant had email correspondence with GMACs counsel regarding the second mortgage on Debtors personal residence and the avoiding its lien. GMACs counsel agreed that no equity existed and agreed to the lien avoidance. Applicant prepared a stipulation and order avoiding GMACs mortgage and secured an order regarding same.

Applicant received and reviewed the 341 status sheet and discussed same with client. Applicant provided the Trustees office with the required documents prior to the First Meeting of Creditors. Applicant traveled to Bankruptcy Court and attended the First meeting of Creditors with the client. Applicant sent correspondence to client regarding the confirmation hearing.

Applicant received objections to confirmation from the Chapter 13 Trustee, Wells Fargo, the Wayne County Treasurer and BAC Home Loans. Applicant had a conference with clients to review and discuss the issues in their case and resolutions to the objections. Applicant also had email correspondence with the clients to discuss these issues.

Applicant prepared an Order Confirming Plan and resolved the

Wayne County Treasurers objections and Wells Fargos objections. Applicant had several email correspondences and telephone conferences with BAC Home Loans counsel regarding its objections to confirmation. **Applicant also had email correspondence with the Trustees office regarding the objections to confirmation.**

Applicant traveled to Detroit to attend the initial confirmation hearing. The confirmation hearing was adjourned due to Trustee and BAC Home Loan objections being unresolved, but with anticipation of resolving same. Applicant had further email correspondence with BAC Home Loans counsel regarding its objections. Applicant reviewed the plan calculations in anticipation of the adjourned confirmation hearing and in an effort to resolve the remaining objections to confirmation.

Applicant traveled to Detroit and attended the adjourned confirmation hearing. The adjourned confirmation hearing was adjourned again to allow Applicant and BAC Home Loans counsel to finalize their resolution to BACs objections. Applicant reviewed an executed BAC Home Loans stipulation resolving the objections to confirmation.

Applicant prepared a revised Order Confirming Plan in anticipation for the second adjourned confirmation hearing. Applicant emailed the Trustee and BAC Home Loans counsel regarding the revised Order Confirming Plan. BAC Home Loans counsel approved the Order Confirming Plan.

Applicant traveled to Detroit for the second adjourned confirmation hearing. The confirmation hearing was adjourned to allow Applicant to submit a revise Order Confirming Plan, which Applicant did. Applicant received the entered Order Confirming Plan and sent correspondence to the clients regarding same.¹

The Court should not have to sift through such a lengthy summary to separate the ordinary from the non-ordinary, to look for circumstances that made this case more expensive than the norm. The point of the local rule is that counsel should provide that, in a separate,

¹ Fee Application (Docket # 56) at 1-3 (emphasis added).

clearly identifiable section of the fee application.

In the Court's experience, which by now includes reviewing hundreds of fee applications in Chapter 13 cases, the local rule requirement at issue is not terribly difficult to satisfy, and Chapter 13 debtor attorneys generally are able to do so without a great deal of effort. Applicant must try again to satisfy this requirement, by filing a further supplement in support of its fee application.

Accordingly,

IT IS ORDERED that the applicant must further supplement its fee application by filing a supplement that includes the information required by the second sentence of L.B.R. 2016-1(a)(3), and that is consistent with this Order. Applicant must file such supplement **no later than October 29, 2009**. The Court will consider further the applicant's fee application promptly after the required supplement is filed.

Signed on October 26, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge